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March 27, 2012

The Honorable Jeff Danielson
The Honorable William A. Dotzler, Jr.
State Senators

The Honorable Bob M. Kressig
The Honorable Deborah L. Berry
The Honorable Anesa Kajtazovic
The Honorable Chris Hagenow
The Honorable Walt Rogers
The Honorable Pat Grassley
State Representatives

Dear Members of the General Assembly:

In letters dated March 1 and 6, 2012, you requested an opinion from this office addressing the Iowa Board of Regents' decision to close the Malcolm Price Laboratory School. Generally, you ask whether the Regents possess the necessary legal authority to close the School. Today litigation was filed to challenge the action by the Board of Regents. Under this circumstance we will not proceed with an opinion.

Generally, we do not issue opinions when to do so would interfere with the authority of the courts. See 61 Iowa Admin. Code 1.5(3)(a) ("The attorney general may decline to issue an opinion where appropriate, as in the following examples . . . The matter is pending in litigation or litigation is imminent, or other formal proceeding provided by law for resolution of the issue and issuance of the opinion could interfere with the authority of the other forum."). It is inappropriate for our office to express its view on an issue of law that has been submitted to the courts to decide. The Iowa Supreme Court has specifically commented on this policy. *Martin v. Peoples Mut. Sav. and Loan Ass'n*, 319 N.W.2d 220, 230 n.6 (Iowa 1982).

State Senators Danielson & Dotzler, Jr.
State Representatives Kressig, Berry, Kajtazovic,
Hagenow, Rogers and Grassley
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Once litigation has been filed against state officials, moreover, we must consider our obligation to defend the litigation. Iowa Code § 13.2(1)(c) ("It shall be the duty of the attorney general, except as otherwise provided by law to . . . Prosecute and defend all actions and proceedings brought by or against any state officer in the officer's official capacity.").

We regret we cannot be of further assistance to you.

Sincerely,

JULIE F. POTTORFF
Deputy Attorney General